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## NOTICE OF *EX PARTE* PRESENTATION

September 30, 2003

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWA325  
Washington, DC 20554

**Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45**

Dear Ms. Dortch:

The attached written *Ex Parte* Presentation concerning the above-referenced proceeding was sent to the Federal and State Commissioners of the Federal-State Joint Board on Universal Service (Joint Board) and the State Consumer Advocate of the Joint Board, with copies to the legal advisers of the Federal Commissioners, staff of the State and Federal Commissioners, and staff of the State Consumer Advocate by the undersigned on September 30, 2003, on behalf of the United States Telecom Association (USTA). In accordance with FCC Rule 1.1206(b)(1),<sup>1</sup> this Notice of *Ex Parte* Presentation and a copy of the *Ex Parte* Presentation are being filed with you electronically for inclusion in the public record. Please feel free to contact me at (202) 326-7300 if you have any questions.

Sincerely,

A handwritten signature in blue ink, reading "Robin E. Tuttle", is positioned above a horizontal line.

Robin E. Tuttle  
Associate Counsel

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<sup>1</sup> 47 C.F.R. §1.1206(b)(1).

Attachment

cc:

The Honorable Kathleen Q. Abernathy  
The Honorable Jonathan S. Adelstein  
The Honorable Thomas Dunleavy  
The Honorable Bob Rowe  
Greg Fogleman  
Katie Ling  
Barbara Meisenheimer  
Lori Kenyon  
Jennifer Schneider  
Matthew Brill  
Peter Bluhm  
Dana Walton-Bradford  
Lisa Zaina  
Peter A. Pescosolido  
Jennifer A. Gilmore  
Sharon Webber  
Larry M. Stevens  
Michael H. Lee  
William Scher  
Brad Ramsay  
Paul Garnett

The Honorable Kevin J. Martin  
The Honorable G. Nanette Thompson  
The Honorable Lila A. Jaber  
Mr. Billy Jack Gregg  
Philip McClelland  
Carl Johnson  
Shannon Lipp  
Earl Poucher  
Joel Shifman  
Geoff Waldau  
Daniel Gonzalez  
Charlie Bolle  
David Dowds  
Eric Einhorn  
Mary E. Newmeyer  
Bryan Clopton  
Diane Law Hsu  
Carol Matthey  
Jeff Pursley  
Anita Cheng



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September 30, 2003

***EX PARTE PRESENTATION***

*Via e-mail*

Commissioner Kathleen Q. Abernathy  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-B115  
Washington, DC 20554

Commissioner G. Nanette Thompson  
Regulatory Commission of Alaska  
1016 West 6<sup>th</sup> Avenue, Suite 400  
Anchorage, AK 99501

Commissioner Kevin J. Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-A204  
Washington, DC 20554

Commissioner Thomas Dunleavy  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223-1350

Commissioner Jonathan S. Adelstein  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room 8-C302  
Washington, DC 20554

Commissioner Lila A. Jaber  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Gerald Gunter Building  
Tallahassee, FL 32399-0850

Mr. Billy Jack Gregg  
Director, Consumer Advocate Division  
723 Kanawha Boulevard, East  
7<sup>th</sup> Floor, Union Building  
Charleston, WV 25301

Commissioner Bob Rowe  
Montana Public Service Commission  
1701 Prospect Avenue  
PO Box 202601  
Helena, MT 59620-2601

**Re: Ex Parte Presentation CC Docket No. 96-45**

Dear Commissioners and Consumer Advocate:

I am writing on behalf of the United States Telecom Association (USTA) regarding the above-referenced proceeding on the Federal Communications Commission's (FCC's) rules relating to high-cost universal service support and the designation process for eligible telecommunications carriers (ETCs), which are currently under consideration by the Federal-State Joint Board on Universal Service (Joint Board) as it prepares to make a recommendation to the FCC on these matters. The Joint Board's recommendations will be critically important for preserving and advancing universal service because demand for support from the universal service fund (Fund) is growing at the same time that there is an erosion of the base of revenues on which contributions to the Fund are made today.

As demand on the Fund increases, it has become necessary to require a greater percentage of contributions from the current revenue base. For this reason it is imperative that the base of funds from which contributions are drawn must be broadened to ensure the future existence of a sufficient

Fund. Equally important to the need to expand the revenue base from which contributions are made is the growth in the demand on the Fund. The demand on the Fund has dramatically increased in large part due to the lack of adequate public interest analyses by state regulatory agencies and the FCC in designating multiple ETCs. In making many of these ETC designations, the states and the FCC have viewed the Fund as an inducement to bring competition into high-cost areas, while de-emphasizing the paramount public interest purpose of Section 254 of the 1996 Act – to ensure the availability of reasonably comparable telecommunications service throughout the nation. In many cases, competition has become the sole public interest standard. Because ETC designations too often are made solely to promote competition, the number of ETC designations has significantly increased, which has led to an excessive demand on the Fund, threatening the sustainability of universal service itself. The future of universal service depends now on the Joint Board's ability to bring the focus of the ETC public interest analysis back to the mandates embodied in Section 254 – 1) availability of just, reasonable, and affordable rates; 2) access to advanced services in all regions of the nation; 3) access to reasonably comparable telecommunications and information services by all consumers at reasonably comparable rates; 4) specific, predictable, and sufficient support mechanisms; and 5) equitable and nondiscriminatory contributions to the Fund.<sup>2</sup>

USTA believes that the mandates embodied in Section 254 necessitate the following recommendations be made to the FCC.

- The standards for designating ETCs must be strengthened. The public interest determination for granting ETC status, and thus which carriers are eligible for universal service support, should focus on whether the benefits of designating multiple ETCs outweigh the costs of supporting multiple networks. Consideration should be given to the impact that an additional ETC will have on the size of the Fund; the ability of the carrier seeking ETC status to serve an entire service area if the original ETC relinquished its ETC status; the financial stability of a carrier seeking ETC status and thus its ability and plans to build its network and sustain operations; the ability of the carrier seeking ETC status to provide all elements of universal and lifeline services; and the existence of or plans for a published tariff with terms and conditions of services offered. However, simply facilitating marginal competition should not be a determining factor in the ETC designation process. Competition is not one of the identified principles in Section 254 of the 1996 Act for preserving and advancing universal service and it is not necessary for the protection of the public interest, convenience, and necessity. Competition is a worthy goal, but it cannot come at the expense of investment in critical telecommunications infrastructure capable of providing service at affordable rates. If any part of the basis for designating a carrier as an ETC is to promote competitive entry into the telecommunications market, then some of the universal service funding that the carrier receives should come from state universal service funding.
- The Fund should be used to help recover the cost of networks, not lines or services. Supporting networks encourages and enables ETCs to invest in critical telecommunications infrastructure.
- The Fund should provide support for all lines, not just a customer's primary line. Supporting only primary lines discourages network investment, leads to administrative burdens and costs,

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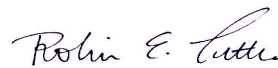
<sup>2</sup> See 47 U.S.C. §254(b).

and denies business and residential consumers in high-cost areas with access to services and rates that are reasonably comparable to their urban counterparts.

- The overall size of the Fund should not be capped or limited at this point in time. Capping or limiting the Fund is contrary to the requirement in Section 254(b)(5) of the 1996 Act that universal service support should be specific, predictable, and sufficient to preserve and advance universal service.<sup>3</sup> A cap on the size of the Fund would cause the pool of funding to be divided among the multiple carriers designated as ETCs so that funding might no longer be sufficient and, as a result, carriers would be unable to recover the costs of providing universal service.
- Support should be based on the costs of incumbent local exchange carriers (ILECs) for all ETCs.
- All carriers designated as ETCs should be subject to the service quality standards, reporting requirements, and billing requirements established by the state regulatory agency for ILECs.
- State regulatory agencies should decertify an ETC that is not meeting the qualifications or requirements for which its ETC status was granted. States cannot abdicate this responsibility. They must ensure the integrity of the Fund by permitting only those carriers that are truly eligible for support from the Fund to receive it.

USTA appreciates this opportunity to provide input towards the Joint Board's recommendations on ETC designations and use of the Fund. USTA would welcome an opportunity to address any questions or provide further detail regarding its proposals.

Sincerely,



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Robin E. Tuttle  
Associate Counsel

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<sup>3</sup> See 47 U.S.C. §254(b)(5).

cc:

Greg Fogleman  
Carl Johnson  
Lori Kenyon  
Joel Shifman  
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Charlie Bolle  
Peter A. Pescosolido  
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Mary E. Newmeyer  
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